

REMARKS

This Preliminary Amendment, submitted along with a request for an RCE, is responsive to the Final Action mailed October 31, 2005. Claims 34 and 49 are herein cancelled, without prejudice. Presently pending are claims 30, 33, 46-48 and 50-62.

In the October 31, 2005 Final Action, the Examiner rejected claims 30, 33-34, 46-49, 51, 53-55, 57 and 59-62 under 35 USC 103(a) as being unpatentable over Reick in view of Johnson et al., or vice versa, and rejected claims 50, 52, 56 and 58 under 35 USC 103(a) as being unpatentable over the combination of Reick and Johnson et al. in view of Saotome.

Applicant respectfully traverses these grounds for rejection. Applicant has amended claims 30 and 46 herein, the only remaining independent claims. It is noted, however, that applicant does not believe amendment of these claims is necessary to overcome the Examiner's continuing rejections thereof and therefore expressly reserves its right to later seek the protection of claims 30 and 46 as presented in the last response, in a later filed continuing application. Some of the reasons applicant believes these rejections were incorrectly propounded by the Examiner in the October 31, 2005 Final Action, include but are not limited to: (1) the Examiner incorrectly classifying elements 15 of Reick as rails and elements 16 of Reick as channels, when in fact applicant believes them to be the opposite; and (2) the Examiner is incorrect to state that one of ordinary skill in the art would replace the Reick clip with the clip having the openable gate of Johnson et al., or vice versa. If the Reick clip were so replaced, an attachment device extending from a bottom end of the communication device would not be created, but only an openable clip extending over the communication device as shown in Reick. Similarly, if the Johnson et al. openable clip were replaced with the Reick clip, a totally non-functioning clip

would result because the clip of Reick uses element 13 of Reick to complete its ability to achieve its clipping function. Nothing in Reick suggests that its clip is pivotal like Johnson et al.'s or that such would achieve a functional construction.

Hence, applicant believes the Examiner's rejections of at least claims 30 and 46 were incorrectly made in the October 31, 2005 Final Action, and therefore is expressly reserving its right to later argue the substance of these refusals. Nevertheless, in order to move this application along should the Examiner not agree with the above, applicant has herein amended claims 30 and 46 to otherwise overcome the Examiner's basis of rejection of these claims.

Turning now to a discussion of amended claims 30 and 46, applicant has amended both claims to recite that the attachment device when retracting or telescoping into or out from the communication device, does so through a bottom end of the communication device. Such a construction is fully supported in the specification and the figures (at least at 3A and 3B), and therefore, no new matter is presented by these amendments. Nothing in either Reick or Johnson et al. speaks to such a construction. At best, Johnson et al. shows an attachment device that pivots from the back or sides of the communication device, while Reick shows an attachment device that stays flush with a bottom end of the communication device (see at least, Figs. 4 and 5). Hence, as nothing in Reick or Johnson et al. show or suggest an attachment device moving through the bottom end of the communication device, it is respectfully believed that claims 30 and 46, and all of their dependent claims, are now allowable.

Accordingly, applicant believes the claims presently pending and allowable in the application are claims 30, 33, 46-48 and 50-62.

A request for a three-month extension is enclosed, along with a check in the amount of \$1,010 to cover the extension fee for a small entity for three months (\$510) and the filing fee for the RCE (\$500). Applicant does not believe any additional fees are required. However, in the event there are any additional fees due and owing in connection with this matter, or there are any overpayments herein, the Commissioner is authorized to charge or credit same to our Deposit Account No. 11-0223.

Dated: April 25, 2006

Respectfully submitted,

By 

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal service as first class mail, in a postage prepaid envelope, addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on April 25, 2006.

Dated April 25, 2006 Signed  Print Name Michael R. Gilman

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